IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 35302 of 2005(C)

AGAINST THE ORDER DATED 03/09/2005 IN I.A.1882/2005 IN CMA.132/2005 of DISTRICT COURT, THALASSERY

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PETITIONER:

PARAMBATH SREEDHARAN,
S/O.GOVINDAN, `SHEEBAS', MINATH PEEDIKA,
NORTH KAVIYOOR, CHOKLI.P.O.

BY ADV. SRI.M.SASINDRAN
SRI.T.P.ELDHO

RESPONDENT:

K.V.MUHAMMED, S/O.ANDRU,
`RABWA', MINATH PEEDIKA, KAVIYOOR,
CHOKLI.P.O.

BY ADV. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.35302/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAINT IN O.S.273/05 DT.30.7.05 OF MUNSIFF, THALASSERY.

EXT.P2 – TRUE COPY OF ROUGH SKETCH PRODUCED BY PLAINTIFF SHOWING THE LIE AND NATURE OF PROPERTY.

EXT.P3 – TRUE COPY OF COUNTER TO I.A.2058/05 OF MUNSIFF'S COURT, THALASSERY.

EXT.P4 – TRUE COPY OF ORDER IN I.A.2058/05 DT.29.8.05 OF DO.

EXT.P5 – TRUE COPY OF ORDER IN I.A.1882/05 IN CMA.132/05 DT.3.9.05 OF DISTRICT COURT, THALASSERY

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.35302 OF 2005

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DATED THIS THE 8TH JUNE, 2007

J U D G M E N T

Ext.P5 interim order by which the learned District Judge appointed an advocate commissioner to supervise certain maintenance works to be carried out by the respondent (appellant in the C.M.Appeal) and issued certain other directions, is under challenge in this Writ Petition filed by the defendant in the suit whose main complaint seems to be that the learned District Judge passed the interim order ex parte. I find that while admitting the Writ Petition this Court granted stay of operation of Ext.P5, which is being continued till date.

2. Considering the submissions addressed at the Bar by Sri.M.Sasindran, counsel for the petitioner and Sri.R.Parthasarathy, counsel for the respondent, I am of the view that it would have been appropriate if the learned District Judge directed notice to the counsel who was appearing for the petitioner in the Munsiff's Court, before proceeding to pass Ext.P5 order.

3. Under these circumstances, the interim order of stay passed by this Court will remain in force for another six weeks. Neither of the counsel is able to inform me as to whether the directions in Ext.P5

order have been complied with. As rightly pointed out by Mr.Parthasarathy, the order was passed on 3.9.2005 and this Court granted stay only on 19.12.2005 and the possibility of the directions having been complied with already cannot be ruled out. If the directions in Ext.P5 have not been complied with so far, the learned District Judge will dispose of the C.M.A. after hearing both sides at the earliest and at any rate within one month of receiving copy of this judgment. It is made clear that the learned District Judge does not have to be influenced in any manner by the observations in this judgment while disposing of the C.M.A. Continuance of the stay beyond six weeks will be subject to the judgment in the C.M.Appeal.

The Writ Petition is disposed of as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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